

APPEAL NO. 032816
FILED DECEMBER 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 3, 2003. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____; that the claimant did not have disability; and that the appellant/cross-respondent (carrier) waived the right to contest compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022.

The carrier appealed the injury and carrier waiver determinations, contending that the hearing officer overlooked or misconstrued the evidence. The claimant appeals the disability determination, contending that she had only been released to light duty and that her treating doctor took her off duty altogether. Both parties filed responses to the other party's appeal.

DECISION

Affirmed.

The claimant, a keyboard operator, testified about her duties in some detail. Based loosely on the claimant's testimony the hearing officer concluded that the claimant made some 3000 keystrokes/mouse clicks per day although that calculation is disputed. The claimant testified that she began to experience symptoms in her neck, left shoulder, and left upper extremity a week or two before _____, the agreed date of injury pursuant to Section 408.007, and the date the injury was reported to the employer. The claimant was sent to a clinic and received conservative treatment. The claimant continued to work (although it is disputed whether the claimant was working light duty or regular duty) until July 8, 2002, when she began seeing Dr. W, who took the claimant off duty. The carrier received first written notice of the injury on June 11, 2002. In evidence is a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated July 17, 2002, with no indication if, or when it was filed with the Texas Workers' Compensation Commission (Commission). Another TWCC-21 dated August 7, 2002, was filed with the Commission on that same date. The carrier's argument on the waiver issue is that it began the payment of benefits as required (the carrier began paying temporary income benefits on July 17, 2002), citing Texas Workers' Compensation Commission Appeal No. 023010-s, decided January 9, 2003. The hearing officer noted that the Appeals Panel has declined to follow Appeal No. 023010-s as set out in Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer did not err in his determination on this point. Clearly the carrier did not contest compensability within seven days after receiving written notice pursuant to Section 409.021 nor did it take any action indicating

that it accepted the claim or intended to pay benefits within seven days of receiving written notice. See Appeal No. 030380-s.

On the injury and disability issues both parties, in their responses, emphasize that the hearing officer is the sole judge of the weight and credibility to be given to the evidence on the issues on which they respectively prevailed. On the disability issue the hearing officer notes that the claimant continued to work, apparently at her regular duty, from June 7 through July 8, 2002, and that she stopped because Dr. W took her off work. The hearing officer also noted that a report dated July 5, 2002, from the clinic indicated that the claimant's "progress plateaued" and that the claimant's testimony was that her condition on September 16, 2002 (when Dr. W released her to return to work), was not any better than it was on July 8, 2002.

The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge